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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,450	11/29/2001	Jean Marie Field		2444

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EXAMINER

MISKA, VIT W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,450

Applicant(s)

FIELD ET AL.

Examiner

Vit W. Miska

Art Unit

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KW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-9 and 25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-9, 25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 2, 5, 8, 9 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Bruce et al in view of Freeman et al.
2. With respect to claims 25 and 8, Bruce et al discloses a wristwatch free of protruding elements and external stems, as shown in the drawings of the patent, with a band attached to a watch by means of a flush joint (Figs, 2 and 3), the band being without abrupt changes in width and thickness and having even continuous surfaces.
3. Freeman et al discloses a watch/band structure 10, 12 comprised of a flexible material (col. 2, lines 21ff), battery 14, pressure sensitive device 18 located below indents (concave dome switches described at col. 4, lines 16ff).

4. With respect to claim 25, the Bruce et al reference, being a design patent, does not does describe details of the band construction or actuating devices for controlling the watch. One of ordinary skill in the art having both references would be taught that the band in Bruce et al may be made of flexible material, as shown in Freeman et al, as an obvious means for facilitating attachment of the band to the wrist. Further, pressure sensitive devices or switches for actuating the watch may be provided in Bruce et al shown at 18 of Freeman et al as an obvious means for allowing setting and actuating the watch in a manner that allows the band/watch structure in Bruce et al to retain its smooth shape. The disclosure of "conductive concave dome switches laminated between to top and bottom layers of the device 10" (col. 4, lines 17-19) in Freeman et al implies indents extending below the surface of the watch, as claimed in claim 25.

5. With respect to claim 2, it is conventional to provide access means for the battery in a timepiece. It would therefore be obvious for one skilled in the art to provide the same in Bruce et al and follow the design of the watch.

6. With regard to claim 5, it is noted that a variety of watches are available as water resistant. It would be obvious for one skilled in the art to design the timepiece of Bruce et al in the same manner. Further, it is conventional to provide ornamentation on a

watch and/or band as claimed in claim 9 and this feature may be provided in Bruce et al to provide the desired aesthetic effects.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruce et al and Freeman et al as applied to claim 25 above, and further in view of Neher. Bruce et al does not disclose details of the band end attachment means. The Neher reference discloses a bayonet type clasp means 17 provided for a watch band 3 which is snag free and smooth when closed. One skilled in the art would thus consider this manner of attaching the wristband of Bruce et al as one of several conventional ways for providing a smooth clasp for the device of the reference to maintain the design of the timepiece.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruce et al and Freeman et al as applied to claim 25 above, and further in view of Schickedanz. The Schickedanz patent teaches the use of a flexible and stretchable wristband having watch components (see claim 4 of the patent). One skilled in the art having both references would have a suggestion of making the wristband/watch of Bruce et al of stretchable material as a means for adapting of the band to the wrist of the wearer.

Response to Arguments

9. The bulk of applicant's argument is directed to Bruce et al lacking the limitations of claim 25 with respect to the shape and physical appearance of the watch and band.

The expressions in claim 25 to which applicant refers are the following:

"a safety wristwatch system free of protruding elements and external stems";

"a battery operated watch...having an even surface devoid of roughness and projections";

"a band of flexible material... said band being without abrupt changes in width and thickness and having even continuous surfaces...".

10. The case law with regard to interpretation of claim terminology is well settled, i.e. the terms and expressions in claims are to be given the broadest reasonable interpretation (dictionary definition) , unless the specification sets forth a special meaning or limits such terms and expressions. Perusing applicant's specification, no special definition is set forth for any of the terms quoted from claim 25, above. Thus, the terms "even", "protruding", "devoid of roughness and projections", "without abrupt changes" and "even and continuous surfaces" are assumed to mean what they reasonably suggest within the context of their standard definition.

11. Considering applicant's invention, Figs. 2 and 3 indicate that the watch/band structure has a gradual increase in width in the central portion thereof (Fig. 2) and also an increased thickness in the middle as shown in Fig. 3. Thus, the terminology in claim 25 does not preclude changes in width or thickness, the limitation being that such changes be gradual and smooth. Applying this terminology to the Bruce et al watch/band, it is apparent that the shape of the disclosed structure meets all the limitations set forth in claim 25 noted above with respect to shape and appearance.

12. Turning to pages 3- 4 of applicant's remarks, applicant refers to the "S" form of the band, the display being in the form of an ellipse and the central "arch" shaped portion of the band and display as resulting in a structure with protruding elements and having abrupt changes, contrary to the language of claim 25. As noted in the preceding paragraph, the only limitations which may be attributed to the claim language with regard to shape is the absence of abrupt changes in thickness or width of the watch/band structure. In Fig. 2 of applicant's drawing the increase in width appears to be about 40° from band portion 8 to display portion 13 where the band meets the display area, and the change in thickness in Fig. 2 appears occur at about 30° in the area of the display. These changes in dimension are generally within the approximate range as the changes in the Bruce et al structure as seen in Figs. 1-5. Further, these changes in Bruce et al occur gradually, i.e. in a curvilinear fashion.

13. Applicant further argues that the "S" shape and elliptical display results in a wider wristwatch. This may or may not be true; however, applicant's claims do not define specific dimensional relationships.

14. Applicant further indicates that the thickness in the display area of Bruce et al is at least twice as it would be if not for the specific design. Again, applicant's claims do not set forth dimensions. The dome shaped display area in the reference meets the limitations of being smooth, even, continuous and without abrupt changes.

Further, it should be noted that the maximum thickness in Fig. 3 of applicant's drawing along the B-B line appears to be about twice that of the thickness along line A-A, and thus, the argument lacks merit.

15. With respect to the Freeman et al patent, applicant argues that the reference includes protruding elements and the combination with Bruce et al would result in a structure which does not meet the limitations of claim 25. In response, the rejection is based not on a combination or union of the features of both references, but rather, Freeman et al is used only to show that the band may be made of flexible material and that the control switches may be of the pressure actuated concave or indented type. In view of the lack of description of these features in Bruce et al, one skilled in the art would avail himself of available resources to provide a suitable design for these two

features. The fact that Freeman et al may contain protruding elements is not germane to the grounds of rejection, which does not rely on these features.

16. Applicant argues that the Neher patent applied to claims 3 and 4 also includes protruding elements and is therefore unsuitable in Bruce et al. The rejection of these claims again is based not on a literal combination, but on the teaching of a "bayonet" type clasp means in a wrist worn device. A variety of band – end attaching means are available for use in securing a wristwatch to the wrist of the user. The claimed design is shown in Fig. 3 of Neher, the snag free feature being evident in Fig. 4 where the wrist worn device is secured with the clasp. Bruce et al does not set forth details of the band attaching means, and one skilled in the art would select a design suitable for use therein, such as that disclosed by Neher. Regarding the materials of which the band in Neher is constructed, patentee suggests "high tensile strength plastic fiber and stainless steel" at col. 7, line 34, not only steel as argued by applicant.

17. The rejection of claim 7 over Bruce et al, Freeman et al and Schickedanz is traversed by applicant on the grounds that the wristband in the latter reference is flexible and stretchable in some manner different from applicant's wristband. The only reference in applicant's specification to the modification of claim 7 appears at page 7, line 13 where applicant states: "Possible embodiments of the invention may include...slip on bracelets, stretchable bracelets, sized bracelets..." This general

description lacks any details which support applicant's attempt to distinguish the claimed "continuous and stretchable" band from the suggested elastic and stretchable band described at col. 3, line 13 and in claim 4 of Shickedanz. Applicant has not disclosed any preferred material for the claimed band, stating that the band may be constructed from a "variety of flexible materials known in the art" at page 6, line 8 from the bottom. Applicant's argument that the Schickedanz band is not snag free does not appear convincing in view of Figs. 1-6 of the patent. Nevertheless, this feature is not at issue. The teaching of the reference suggesting a flexible and stretchable band in a timepiece is applied to Bruce et al to suggest to one skilled in the art that the band in Bruce et al may be made stretchable by using appropriate materials.

18. Applicant requested that the Bruce et al patent be made of record. The reference is cited on PTO-892 with this action. Applicant had not requested that the period for response to the previous Office action be restarted.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 703-308-3096. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 703-308-3121. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

VM
1/18/204

A handwritten signature in black ink, appearing to read 'Vit W. Miska', with a stylized flourish at the end.

Vit Miska
Examiner